

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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:
IN RE BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYMENT RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION
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Master File No. 09 MDL 2058 (PKC)
ECF CASE

THIS DOCUMENT RELATES TO
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All Securities Actions
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**DECLARATION OF JOSHUA A. NAFTALIS IN SUPPORT OF
DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO
LEAD PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

1. I am an attorney admitted to practice before this Court and an associate at the law firm of Wachtell, Lipton, Rosen & Katz, counsel for Defendants Bank of America Corporation, Banc of America Securities LLC, Kenneth D. Lewis, Joe L. Price, Neil A. Cotty, William Barnet III, Frank P. Bramble, John T. Collins, Gary L. Countryman, Tommy R. Franks, Charles K. Gifford, Monica C. Lozano, Walter E. Massey, Thomas J. May, Patricia E. Mitchell, Thomas M. Ryan, O. Temple Sloan, Jr., Meredith R. Spangler, Robert L. Tillman and Jackie M. Ward in these actions.

2. I respectfully submit this declaration to provide the Court certain documents that are referenced in the Defendants' Memorandum of Law in Opposition to Lead Plaintiffs' Motion for Class Certification.

3. To aid the Court's review of these documents and reduce the volume of material submitted to the Court, certain of the annexed documents are provided in excerpted form and/or are marked (with lines in the margin next to certain text) for ease of reference, as

indicated in the table below. Full, non-marked versions of such documents will be provided upon request of the Court or counsel.

4. The attached materials include documents that (as noted in our accompanying Memorandum of Law) defendants do not believe may be properly considered as record evidence on this motion, such as the Second Amended Complaint, plaintiffs' June 4, 2010 letter to the Court, and the reports and testimony of plaintiffs' expert Stephen Choi, or that even if appropriately considered on this motion do not satisfy plaintiffs' burden of proof. These materials are being included only so that the Court has readily available to it the materials discussed in defendants' Memorandum of Law, and defendants do not waive their objection to such materials being properly considered as record evidence on this motion or in any way concede such materials satisfy plaintiffs' burden of proof.

5. Annexed hereto are true and correct copies of the following:

<u>Exhibit</u>	<u>Description</u>
1.	Consolidated Second Amended Class Action Complaint, Oct. 15, 2010
2.	Proxy Statement, Nov. 3, 2008 (marked)
3.	Expert Report of Chad Coffman, Aug. 29, 2011
4.	Expert Report of Allen Ferrell (with supplemental exhibits), Sept. 16, 2011
5.	Expert Rebuttal Report of Chad Coffman, Sept. 26, 2011
6.	Expert Rebuttal Report of Stephen J. Choi, Sept. 26, 2011
7.	Deposition Transcript of Allen Ferrell, Oct. 13, 2011
8.	Deposition Transcript of Stephen J. Choi, Oct. 13, 2011
9.	Deposition Transcript of Chad Coffman, Oct. 14, 2011
10.	Excerpts from Deposition Transcript of Femke van't Groenewout-Hendriks (designee of lead plaintiff Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V. ("PGGM")), Sept. 13, 2011

<u>Exhibit</u>	<u>Description</u>
11.	Excerpts from Deposition Transcript of plaintiff Grant L. Mitchell, Sept. 22, 2011
12.	Excerpts from Deposition Transcript of Alan J. Davidson (designee of lead plaintiff Ohio Public Employees Retirement System (“OPERS”)), Sept. 26, 2011
13.	Excerpts from Deposition Transcript of Agneta Wilhelmson Karemar (designee of lead plaintiff Fjärde AP-Fonden (“AP4”)), Sept. 27, 2011
14.	Excerpts from Deposition Transcript of Donald Fortunate (designee of lead plaintiff State Teachers Retirement System of Ohio (“OSTRS”)), Sept. 27, 2011
15.	Excerpts from Deposition Transcript of Ed Corallo (designee of BlackRock, investment advisor to lead plaintiff PGGM), Sept. 27, 2011
16.	Excerpts from Deposition Transcript of Syed Zamil (designee of BlackRock, investment advisor to lead plaintiff OPERS), Sept. 28, 2011
17.	Excerpts from Deposition Transcript of designee of Wai Lee (designee of Neuberger Berman LLC, investment advisor to lead plaintiff Teachers Retirement System of Texas (“TRS”)), Sept. 28, 2011
18.	Excerpts from Deposition Transcript of Gregory Brunk (designee of BlackRock, investment advisor to lead plaintiff TRS), Sept. 30, 2011
19.	Excerpts from Deposition Transcript of Elizabeth Graseck, Oct. 3, 2011
20.	Excerpts from Deposition Transcript of Timothy P. Wei (designee of lead plaintiff TRS), Oct. 7, 2011
21.	Excerpts from AP4’s Answers and Objections to Bank of America Corporation’s First Set of Interrogatories, Sept. 6, 2011
22.	Excerpts from PGGM’s Answers and Objections to Bank of America Corporation’s First Set of Interrogatories, Sept. 6, 2011
23.	Excerpts from Grant Mitchell’s Answers and Objections to Bank of America Corporation’s First Set of Interrogatories, Sept. 6, 2011
24.	Excerpts from OPERS’ Amended Verified Answers and Objections to Bank of America Corporation’s First Set of Interrogatories, Sept. 15, 2011
25.	Excerpts from OSTRS’ Verified Answers and Objections to Bank of America Corporation’s First Set of Interrogatories, Sept. 6, 2011

<u>Exhibit</u>	<u>Description</u>
26.	Excerpts from TRS' Verified Answers and Objections to Bank of America Corporation's First Set of Interrogatories, Sept. 6, 2011
27.	Andrew Ross Sorkin, <i>Lehman Files for Bankruptcy; Merrill Is Sold</i> , N.Y. TIMES, Sept. 15, 2008
28.	<i>Size Matters</i> , THE ECONOMIST, Sept. 20, 2008
29.	David Sands & Sean Lengell, <i>House Rejects Historic Bailout Bill</i> , WASH. TIMES, Sept. 30, 2008
30.	<i>Blocked Pipes</i> , THE ECONOMIST, October 4, 2008
31.	Simon Bowers, <i>Wall Street Banks in \$70bn Staff Payout</i> , THE GUARDIAN, Oct. 17, 2008 (marked)
32.	Excerpts from Transcript, <i>The Situation Room: Fight For the Middle Class; Ohio Voting Problems</i> , CNN, Oct. 23, 2008 (marked)
33.	Rachel Beck & Joe Bel Bruno, <i>No curbs on Wall Street pay despite meltdown</i> , ASSOCIATED PRESS, Oct. 24, 2008 (marked)
34.	Transcript, <i>Issues with Jane Velez-Mitchell</i> , CNN, Oct. 24, 2008 (marked)
35.	Christine Harper & Serena Saitto, <i>Firms Still Setting Aside Billions for Bonuses</i> , N.Y. TIMES, Oct. 27, 2008 (marked)
36.	Christine Harper & Serena Saitto, <i>Broken Securities Industry Still Has \$20 Billion to Pay Bonuses</i> , BLOOMBERG, Oct. 27, 2008 (marked)
37.	Excerpts from Transcript, <i>Today Show</i> , NBC, Oct. 28, 2008 (marked)
38.	Christine Harper, <i>Wall St. Won't Surrender on Bonuses, Veterans Say</i> , BLOOMBERG, Oct. 30, 2008 (marked)
39.	<i>Bankers Reluctant to Surrender Bonuses</i> , FIN. TIMES, Oct. 31, 2008 (marked)
40.	Transcript, <i>Political Headlines Report with Brit Hume</i> , Fox News, Nov. 13, 2008 (marked)
41.	Dave Sherlock, <i>Equities in Retreat as Risk Aversion Returns</i> , FIN. TIMES, Nov. 13, 2008
42.	Susanne Craig, et al., <i>Goldman Faces Loss of \$2 Billion for Quarter</i> , WALL ST. J., Dec. 2, 2008

<u>Exhibit</u>	<u>Description</u>
43.	Bradley Keoun & Jacqueline Simmons, <i>Merrill Said to Cut Bonuses by 50% as Revenue Slumps</i> , BLOOMBERG, Dec. 3, 2008 (marked)
44.	Michael Kitchen, <i>Merrill Lynch Reportedly to Slash Bonuses in Half</i> , MARKETWATCH, Dec. 3, 2008
45.	<i>Deutsche Bank, Citi Start Cutting Jobs</i> , DOW JONES NEWSWIRES, Dec. 3, 2008 (marked)
46.	Wong Ka-chun & Tim LeeMaster, <i>Investment bank staff face big bonus cuts</i> , SOUTH CHINA MORNING POST, Dec. 4, 2008 (marked)
47.	James Quinn & Jonathan Sibun, <i>Investment banks set to cut 30,000 Jobs</i> , DAILY TELEGRAPH, Dec. 4, 2008 (marked)
48.	<i>Boost for Bankers</i> , DAILY MAIL, Dec. 4, 2008 (marked)
49.	Bank of America, Press Release, <i>Bank of America Earns \$4 Billion in 2008</i> , Jan. 16, 2009
50.	Tom Petrino, <i>Nationalization rumors slam Citigroup, Bank of America</i> , L.A. TIMES, Jan. 15, 2009 (marked)
51.	Patrick Rucker and Jonathan Stempel, <i>Bank of America gets big government bailout</i> , REUTERS, Jan. 16, 2009 (marked)
52.	Scott Lanman & Craig Torres, <i>Bank of America Gets \$138 billion in U.S. Funds, Asset Backstop</i> , BLOOMBERG, January 16, 2009 (marked)
53.	Gregory Farrell & Julie MacIntosh, <i>Merrill paid bonuses as losses mounted ahead of sale to BofA</i> , FIN. TIMES, Jan. 22, 2009
54.	Mark Hawthorne, <i>Merrill Lynch rejects insider trading claims</i> , SYDNEY MORNING HERALD, June 1, 2009
55.	Excerpts from Merrill Lynch & Co., Inc., Current Report (Form 8-K), Jan. 17, 2008
56.	Excerpts from Merrill Lynch & Co., Inc., 2007 Annual Report (Form 10-K), Feb. 25, 2008 (marked)
57.	Excerpts from Merrill Lynch & Co., Inc., Quarterly Report (Form 10-Q), May 6, 2008 (Q1 2008)
58.	Excerpts from Merrill Lynch & Co., Inc., Quarterly Report (Form 10-Q), Aug. 5, 2008 (Q2 2008) (marked)

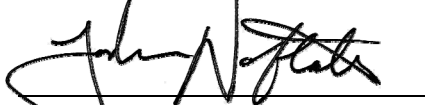
<u>Exhibit</u>	<u>Description</u>
59.	Transcript, Conference Call, <i>Acquisition of Merrill Lynch by Bank of America Corporation</i> , Sept. 15, 2008 (marked)
60.	Transcript, Press Conference, <i>Bank of America Acquiring Merrill Lynch</i> , Sept. 15, 2008 (marked)
61.	Excerpts from Merrill Lynch & Co., Inc., Current Report (Form 8-K), Oct. 16, 2008 (marked)
62.	Merrill Lynch & Co., Inc., Final Transcript, <i>Q3 2008 Earnings Call</i> , Oct. 16, 2008 (marked)
63.	Excerpts from Bank of America Corporation, Current Report (Form 8-K), Oct. 6, 2008 (marked)
64.	Excerpts from Merrill Lynch & Co., Inc., Current Report (Form 8-K), Oct. 24, 2007 (marked)
65.	Excerpts from Merrill Lynch & Co., Inc., Quarterly Report (Form 10-Q), Nov. 5, 2008 (Q3 2008) (marked)
66.	Excerpts from Bank of America Corporation, Quarterly Report (Form 10-Q), Nov. 6, 2008 (Q3 2008) (marked)
67.	Transcript, <i>Merrill Lynch Banking & Financial Services Conference</i> , Nov. 11, 2008 (marked)
68.	Excerpts from Transcript of Bank of America Corporation Special Shareholder Meeting, Dec. 5, 2008 (marked)
69.	Bank of America Corporation, Current Report (Form 8-K), Jan. 16, 2009
70.	Excerpts from Merrill Lynch & Co., Inc., 2010 Annual Report (Form 10-K), Mar. 1, 2011 (marked)
71.	Excerpts from Bank of America Corporation, 2010 Annual Report (Form 10-K), Feb. 25, 2011 (marked)
72.	David Trone & Ivy De Dianous, <i>Core 3Q08 Results Reveal Business Deterioration</i> , FOX-PITT KELTON REPORT, Oct. 16, 2008 (marked)
73.	<i>Merrill Lynch 3Q EPS Roughly in Line, But Sept Volatility Takes a Toll</i> , MORGAN STANLEY REPORT, Oct. 16, 2008 (marked)

<u>Exhibit</u>	<u>Description</u>
74.	<i>Bank of America Corp (BAC) Reducing Estimates and Target Price</i> , CITIGROUP REPORT, Dec. 2, 2008 (marked)
75.	<i>Banking — Large Cap Banks, Marking to Market 4Q08</i> , MORGAN STANLEY REPORT, Dec. 7, 2008
76.	E-mail from Betsy Graseck to OSTRS enclosing link to Dec. 7, 2008 research report (Ex. 75), Dec. 8, 2008
77.	E-mail from Betsy Graseck to TRS enclosing link to Dec. 7, 2008 research report (Ex. 75), Dec. 8, 2008
78.	E-mail from Betsy Graseck to PGGM enclosing link to Dec. 7, 2008 research report (Ex. 75), Dec. 8, 2008
79.	E-mail from Betsy Graseck to AP4 enclosing link to Dec. 7, 2008 research report (Ex. 75), Dec. 8, 2008
80.	Remarks by Secretary Henry M. Paulson, Jr. on Financial Rescue Package and Economic Update, Nov. 12, 2008 (marked)
81.	TED Spread Chart: 5-year span (source: Bloomberg)
82.	CBOE SPX Volatility Index Chart: 5-year span (source: Bloomberg)
83.	Excerpts from <i>The Best Analysts of the Year</i> , INSTITUTIONAL INVESTOR (2009) (marked)
84.	Excerpts from <i>The Best Analysts of the Year</i> , INSTITUTIONAL INVESTOR (2010) (marked)
85.	Excerpts from 2008 Starmine Analyst Awards (marked)
86.	Excerpts from 2009 Starmine Analyst Awards (marked)
87.	Excerpts from <i>The Best Brokerage Analysts — #2 Betsy Graseck</i> , Forbes.com, May 7, 2009
88.	<i>Blue Chip Analyst Betsy Graseck</i> , Forbes.com, June 14, 2010
89.	<i>Biographies and pictures: US winners, US — Stock Pickers</i> , FT.com, May 14, 2009
90.	Lead Plaintiffs' Letter to Hon. P. Kevin Castel, June 4, 2010
91.	Results of Regression Analysis by Chad Coffman

<u>Exhibit</u>	<u>Description</u>
92.	Declaration of Chad Coffman, <i>In re Schering-Plough Corp./ENHANCE Sec. Litig.</i> , 08-CV-00397 (D.N.J.), Feb. 7, 2011
93.	E*Trade Financial Trade Confirmations
94.	Email from J. Lee (Merrill Lynch) re: MER 4Q08 Consensus EPS
95.	Excerpts from Bank of America Corporation, Final Transcript, <i>Q3 2008 Earnings Call</i> , Oct. 6, 2008
96.	Excerpts from Stephen J. Choi & A. C. PRITCHARD, SECURITIES REGULATION: THE ESSENTIALS (2008)

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on October 31, 2011
in New York, New York.


Joshua A. Naftalis